

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of

Reclassification of License of
Station KJEL(FM)
(Lebanon, Missouri)

)
)
) **KM-10567**
)
)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION TO MOTION TO ACCEPT
LATE FILED OPPOSITION AND REPLY TO OPPOSITION**

Four Him Enterprises, L.L.C. ("Four Him"), licensee of KHCR(FM) (now KHZR), Potosi, Missouri, files this Opposition to Motion to Accept Late Filed Opposition and Reply to Opposition in response to a Motion to Accept Late Filed Opposition and an Opposition to Order to Show Cause filed by Ozark Broadcasting, Inc. ("Ozark"). Ozark's 15 day late filed Response to the Commission's Order to Show Cause' should be dismissed.'

Four Him is the proponent of a rulemaking seeking to amend the FM Table of Allotments by substituting Channel 249C2 for Channel 249C3 in Potosi, Missouri. As noted in its Petition for Rulemaking, the KHCR (now KHZR) upgrade will result in a significant public interest benefit by resulting in a 99.5 increase in population within the station's proposed 1 mv/m contour. In issuing its *Show Cause Order* the Commission noted that "we consider these changes in channels proposed by Four Him to have sufficient public interest benefits to justify the issuance of a show cause order." In its *Show Cause Order* the Commission directed Ozark, by no later than October 21, 2002, to file a written statement showing with particularity why its construction permit should not be modified as proposed [Channel 279C0, Lebanon, Missouri]. The Order further noted, "If no written statement is filed by the date referred to above [October 21, 2002] the Licensee will be deemed to have

¹ *Order to Show Cause*, DA 02-2225 (Released September 20, 2002)("Show Cause Order")

² To the extent deemed necessary, Four Him respectfully requests leave to file this pleading. Good cause exists for accepting this pleading since the arguments deal directly with the issues raised by Ozark and in Four Him's underlying rulemaking.

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consented to a modification as proposed in this Order to Show Cause and a final Order will be issued if the modification is found to be in the public interest."

Ozark filed a late filed Opposition to the *Show Cause Order* stating that it intended to file an application for full Class C facilities. Ozark claims its late filed Opposition should be accepted because, "Ozark never received either constructive or actual notice of the Order." On the contrary, it is indisputable that Ozark received notice since the Order to Show Cause was published in the Commission's releases and released on September 20, 2002. Publication in the Commission's releases is deemed notice

Ozark premises its argument on its assertion that a copy of the **Show Cause Order** was not sent to Ozark's counsel and that Ozark never received a copy by certified mail. Ozark has failed to support its claims by the declaration of any Ozark principal

Acceptance of Ozark's late filed Opposition is not in the public interest. Acceptance of the late filed Opposition will undermine the procedural deadlines integral to Show Cause Orders. Not only will this result in delay in processing rulemaking petitions, but will result in uncertainty in the fundamental principle underlying a Show Cause Order, which is that a licensee that does not file by the response day, "will be deemed to have consented to a modification as proposed in this Order to Show Cause."

Respectfully submitted,
FOUR HIM ENTERPRISES, L.L.C.

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November 13, 2002

By: 
A. Wray Fitch III

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³ Note 4 to Rule 73.3573 specifically states in part, "The order to show cause will provide the licensee 30 days to express in writing an intention to seek authority to modify the subject station's technical facilities to minimum Class C HAAT or to otherwise challenge the triggering application. If **no** such intention is expressed and the triggering application is not challenged, the subject station will be reclassified as a Class C0 station, and processing of the triggering application will be completed."

CERTIFICATE OF SERVICE

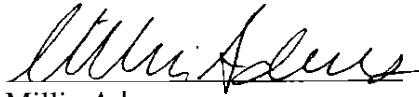
I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent copies of the foregoing OPPOSITION TO MOTION TO ACCEPT LATE FILED OPPOSITION AND REPLY this 13th day of November 2002, by first-class, postage prepaid, U.S. Mail to the following:

* John A. Karousos, Chief. Allocations Branch
Federal Communications Commission
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